

AMENDED IN ASSEMBLY JANUARY 11, 2010

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1054**

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**Introduced by Assembly Member Coto**

February 27, 2009

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An act to amend Section 1861.05 of the Insurance Code, relating to insurance rates.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1054, as amended, Coto. Motor vehicle insurance: rates.

~~Existing law provides that rates set by the commissioner regulations require the Insurance Commissioners to calculate an efficiency standard, or defined in connection with setting insurance rates pursuant to Proposition 103 of the 1988, approved by voters in the November 8, 1988, statewide general election may be judicially challenged for various reasons, as specified.~~

~~This bill would provide that any rate filing, as defined, approved by the commissioner may be challenged, as provided. The bill would prohibit any retrospective adjustment of an approved filing from being awarded unless the insurer has not complied with the terms of the approval. This bill would exclude expenses paid to credit card issuers by the insurer as a result of premiums paid made by credit card from the calculation to determine the insurer's efficiency standard.~~

~~This bill would find and declare that this act furthers the purposes of Proposition 103, and would make supporting and related findings and declarations.~~

Because this bill would amend Proposition 103, it would require a  $\frac{2}{3}$  vote of each house of the Legislature for enactment.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1861.05 of the Insurance Code is  
2 amended to read:

3 1861.05. Approval of Insurance Rates. (a) No rate shall be  
4 approved or remain in effect which is excessive, inadequate,  
5 unfairly discriminatory or otherwise in violation of this chapter.  
6 In considering whether a rate is excessive, inadequate or unfairly  
7 discriminatory, no consideration shall be given to the degree of  
8 competition and the commissioner shall consider whether the rate  
9 mathematically reflects the insurance company's investment  
10 income.

11 (b) Every insurer which desires to change any rate shall file a  
12 complete rate application with the commissioner. A complete rate  
13 application shall include all data referred to in Sections 1857.7,  
14 1857.9, 1857.15, and 1864 and such other information as the  
15 commissioner may require. The applicant shall have the burden  
16 of proving that the requested rate change is justified and meets the  
17 requirements of this article.

18 (c) The commissioner shall notify the public of any application  
19 by an insurer for a rate change. The application shall be deemed  
20 approved 60 days after public notice unless (1) a consumer or his  
21 or her representative requests a hearing within 45 days of public  
22 notice and the commissioner grants the hearing, or determines not  
23 to grant the hearing and issues written findings in support of that  
24 decision, or (2) the commissioner on his or her own motion  
25 determines to hold a hearing, or (3) the proposed rate adjustment  
26 exceeds 7 percent of the then applicable rate for personal lines or  
27 15 percent for commercial lines, in which case the commissioner  
28 must hold a hearing upon a timely request. In any event, a rate  
29 change application shall be deemed approved 180 days after the  
30 rate application is received by the commissioner (A) unless that  
31 application has been disapproved by a final order of the  
32 commissioner subsequent to a hearing, or (B) extraordinary

1 circumstances exist. For purposes of this section, “received” means  
2 the date delivered to the department.

3 (d) For purposes of this section, extraordinary circumstances  
4 include the following:

5 (1) Rate change application hearings commenced during the  
6 180-day period provided by subdivision (c). If a hearing is  
7 commenced during the 180-day period, the rate change application  
8 shall be deemed approved upon expiration of the 180-day period  
9 or 60 days after the close of the record of the hearing, whichever  
10 is later, unless disapproved prior to that date.

11 (2) Rate change applications that are not approved or  
12 disapproved within the 180-day period provided by subdivision  
13 (c) as a result of a judicial proceeding directly involving the  
14 application and initiated by the applicant or an intervenor. During  
15 the pendency of the judicial proceedings, the 180-day period is  
16 tolled, except that in no event shall the commissioner have less  
17 than 30 days after conclusion of the judicial proceedings to approve  
18 or disapprove the application. Notwithstanding any other provision  
19 of law, nothing shall preclude the commissioner from disapproving  
20 an application without a hearing if a stay is in effect barring the  
21 commissioner from holding a hearing within the 180-day period.

22 (3) The hearing has been continued pursuant to Section 11524  
23 of the Government Code. The 180-day period provided by  
24 subdivision (c) shall be tolled during any period in which a hearing  
25 is continued pursuant to Section 11524 of the Government Code.  
26 A continuance pursuant to Section 11524 of the Government Code  
27 shall be decided on a case by case basis. If the hearing is  
28 commenced or continued during the 180-day period, the rate  
29 change application shall be deemed approved upon the expiration  
30 of the 180-day period or 100 days after the case is submitted,  
31 whichever is later, unless disapproved prior to that date.

32 (e) In calculating an insurer’s expenses for purposes of  
33 determining its efficiency standard, the commissioner shall not  
34 include expenses paid to credit card issuers by the insurer as a  
35 result of premium payments made by credit card as defined in  
36 subdivision (a) of Section 1747.02 of the Civil Code.

37 ~~(f) Any rate filing approved by the commissioner may be~~  
38 ~~challenged as provided in this chapter. However, no retrospective~~  
39 ~~adjustment of an approved rate filing may be awarded unless the~~  
40 ~~person challenging the rate filing establishes that the insurer has~~

1 ~~not complied with the approval. “Rate filing” includes the filed~~  
2 ~~rates, premiums, and rating.~~

3 SEC. 2. The Legislature finds and declares that this act furthers  
4 the purposes of Proposition 103 of the November 8, 1988, statewide  
5 general election. Specifically, the Legislature finds and declares  
6 all of the following:

7 (a) Allowing insureds to use credit cards to pay the premiums  
8 on insurance coverage they are legally required to carry is an  
9 important option for insureds in this difficult economy.

10 (b) Insurers that allow insureds to use credit cards to pay  
11 premiums are generally absorbing the costs charged to the insurer  
12 for the use of the credit card.

13 (c) Including expenses paid by the insurer as a result of an  
14 insured’s use of a credit card in the calculation to determine an  
15 insurer’s efficiency standard may discourage insurers from  
16 accepting credit card payments from insureds to pay premiums in  
17 full.

18 (d) By excluding expenses paid to credit card issuers by an  
19 insurer as a result of premiums paid made by credit card, this act  
20 furthers the purpose of Proposition 103 by ensuring that insurance  
21 is fair, available, and affordable to all consumers during this  
22 difficult economy.

23 ~~(e) Current law provides specific steps for rate approval,~~  
24 ~~including liberal provision for consumer participation both before~~  
25 ~~and after an approval.~~

26 ~~(f) Insurers whose rates have been approved pursuant to~~  
27 ~~subdivision (e) of Section 1861.01 and subdivision (e) of Section~~  
28 ~~1861.05 are subject to harsh penalties under Sections 1859.1 and~~  
29 ~~1861.14 for failing to comply strictly with the terms of the~~  
30 ~~approvals, including potential loss of their certificates of authority.~~

31 ~~(g) While preserving all existing rights to challenge an approval,~~  
32 ~~this act also protects reasonable reliance on the commissioner’s~~  
33 ~~rate approval process by ensuring that an insurer is not held~~  
34 ~~retrospectively liable for a return of premium provided that the~~  
35 ~~insurer has met the terms of the commissioner’s final order as~~  
36 ~~embodied in a lawfully secured rate approval.~~

37 ~~(h) This act furthers the purpose of Proposition 103 by providing~~  
38 ~~certainty to insurers and consumers following the commissioner’s~~

- 1 ~~rate approval and by ensuring that the insurance commissioner is~~
- 2 ~~held accountable.~~

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